

STORAGE NAME: h0685.in

DATE: March 17, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 685

RELATING TO: Motor Vehicle Damage Disclosure

SPONSOR(S): Representative Kyle

TIED BILL(S): None.

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION & CONSUMER AFFAIRS YEAS 7 NAYS 0
 - (2) INSURANCE
 - (3) JUDICIARY
 - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

HB 685 would specify the rights, responsibilities, and remedies of manufacturers, dealers, and buyers when a motor vehicle is damaged after manufacture, but prior to delivery to a dealer.

Regardless of the terms of a franchise agreement, a manufacturer would be liable for any and all damage actually known to the manufacturer. The manufacturer would be required to disclose to the dealer damage and repair known to the manufacturer, if the cost of repairing the damage exceeds 3 percent of the manufacturer's suggested retail price (MSRP) or \$650, whichever is less, excluding the cost of certain replacement parts. The dealer would be required to notify the manufacturer of any known damage and seek manufacturer approval before repairing the vehicle. Depending on the circumstances, ownership of the damaged motor vehicle could revert to the manufacturer, or the manufacturer could elect to repurchase the motor vehicle or provide reasonable compensation to assist the dealer in selling the vehicle.

It would be made "unlawful" for a manufacturer to fail to assume all responsibility for any liability resulting from structural or production defects and fail to compensate a dealer for damage repairs authorized by the manufacturer. Prior to entering into a sales contract, a dealer would be required to disclose to a buyer any damage and repair to a motor vehicle, if (1) the dealer has actual knowledge of the damage and repair; and (2) the repair cost exceeds 3 percent of the MSRP or \$650, whichever is less, excluding the cost of certain replacement parts.

If a dealer failed to make the required disclosure, the buyer would have several remedies, in addition to those available under current law. While the buyer could rescind the sales contract up to 30 days from the date of purchase, selection of this remedy would expressly preclude an action for damages under this act for failure to disclose. As an alternative to rescission, the buyer could sue for damages under this act and recover reasonable attorney's fees, if the action is brought within one year after the buyer discovered or reasonably should have discovered the damage. Finally, a buyer could pursue remedies available "under any law." If, however, a dealer is not required to disclose the damage and repairs, a buyer would be barred from suing the dealer or manufacturer based "solely upon the fact that the new motor vehicle was damaged and repaired before completion of the sale."

The bill does not appear to have a fiscal impact on state or local governments.

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The Committee on Business Regulation and Consumer Affairs adopted a “remove everything” amendment which is traveling with the bill. See Section VI. of this analysis.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain.

B. PRESENT SITUATION:

Manufacturers and Dealers

Relations between manufacturers and dealers generally are covered under state law and in franchise agreements ("the contractual relationship between a manufacturer, factory branch, distributor, or importer, and a motor vehicle dealer, pursuant to which the motor vehicle dealer is authorized to transact business pertaining to motor vehicles of a particular line-make"¹). Florida law regulates the content of franchise agreements. All terms and conditions of franchise agreements offered to motor vehicle dealers are of no force and effect under Florida law when inconsistent with state law.²

Florida does not have regulations governing the respective responsibilities, rights, and remedies of manufacturers and dealers specific to the circumstance where a motor vehicle is damaged and repaired after manufacture but before delivery to the dealer. However, that circumstance may be captured under other statutory provisions regulating motor vehicle franchise agreements. For example, a manufacturer must compensate an authorized dealer performing work "to rectify the (manufacturer's) product"³ as part of their warranty responsibility.

Policies and procedures manuals used by motor vehicle manufacturers and referenced in franchise agreements typically spell out the process for handling damaged vehicles. These manuals describe the procedure for handling damaged motor vehicles and specify when a dealer must notify the manufacturer before making a repair. One manufacturer contacted instructs its dealers to disclose to the buyer anything other than "insignificant scratches or dents." The dealer is provided with a disclosure form which must be presented to and signed by buyers at the time of sale.

¹Section 320.60, F.S.

²Section 320.63(3), F.S.

³Section 320.696, F.S.

A violation of a franchise agreement is actionable as a breach of contract. Remedies available to the manufacturer and dealer may include required performance of the contract (i.e., specific performance) or damages. Further, the Department of Highway Safety and Motor Vehicles may deny, suspend, or revoke the license of a manufacturer if, with sufficient frequency, the manufacturer is unable to meet contractual obligations to its dealers.⁴

Dealers and Buyers

Under Florida law,⁵ the Department of Highway Safety and Motor Vehicles may deny, suspend, or revoke the license of a motor vehicle dealer that, with sufficient frequency, fails to disclose certain damages to a new motor vehicle if the dealer had actual knowledge of the damage and if the dealer's cost of repair, excluding tires, bumpers, and glass, exceeds 3 percent of the MSRP. If the damage repair is limited to the application of exterior paint, disclosure is not required unless the cost exceeds \$100. However, a purchaser of a motor vehicle in Florida does not have a statutory cause of action specific to dealer failure to disclose damage and repair occurring to a new motor vehicle after manufacture but prior to delivery to a dealer. The statutes do not address consumer remedies if the required disclosures are not made by the dealer. However, buyers may seek relief through other statutory and common law causes of action.

Buyers can bring a cause of action against a dealer or manufacturer under the "Florida Deceptive and Unfair Trade Practices Act,"⁶ if the buyer has suffered a loss as a result of a violation of the act. The act declares unlawful "(u)nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." If the prevailing party, the buyer can recover actual damages, plus attorney's fees and costs.

Buyers may be able to seek relief in a breach of contract action under an implied warranty. These can be of two types: a warranty of merchantability that the goods shall be merchantable and a warranty of fitness for a particular purpose. These statutory warranties are contained in the Uniform Commercial Code.⁷

A buyer may also pursue a common law cause of action for fraud. To be actionable, a buyer would have to show the following: a false statement of material fact⁸ that the person making the representation knew was false, and an intention that the representation induce another to act on the false statement which resulted in injury to the party acting in reliance

⁴Section 320.64(1), F.S.

⁵Section 320.27(9)(n), F.S.

⁶Section 501.201, et. seq., F.S.

⁷Sections 672.314 and 672.315, F.S.

⁸"The nondisclosure of a material fact . . . may be deemed fraudulent where the other party does not have equal opportunity to become apprised of the fact." 27 FL Jur. 2d, Fraud and Deceit § 38 (1981).

on it.⁹ The buyer generally would be able to recover damages sufficient to compensate him or her for the loss or injury sustained (i.e., to make the buyer whole).

Buyers may also have remedies under local consumer protection ordinances.

C. EFFECT OF PROPOSED CHANGES:

HB 685 would specify the rights, responsibilities, and remedies of manufacturers, dealers, and buyers when a motor vehicle is damaged after manufacture, but prior to delivery to a dealer.

Manufacturers and Dealers

Regardless of the terms of any applicable franchise agreement, a manufacturer would be liable for any and all damage actually known to the manufacturer that occurred to a motor vehicle after manufacture, but prior to delivery of the motor vehicle to a dealer. Liability would apply from the first dollar of repair costs.

Within 7 business days after delivery of a motor vehicle, the dealer would be required to inform the manufacturer of any damage which occurred prior to delivery to the dealer. The dealer would be required to seek authorization from the manufacturer before repairing a vehicle. Ownership of the damaged motor vehicle would revert to the manufacturer if the manufacturer refused or failed to authorize repairs within 10 business days from the date the dealer notified the manufacturer of the damage. If the damage exceeded 3 percent of the MSRP or \$650, whichever is less, excluding the cost of replacement parts, the manufacturer could elect to repurchase the motor vehicle or provide reasonable compensation to assist the dealer in selling the vehicle.

The manufacturer would be required to disclose to the dealer damage and subsequent repair known to the manufacturer which occurred prior to the delivery of the vehicle, if the cost of repairing the damage exceeds 3 percent of the MSRP or \$650, whichever is less, excluding the cost of replacement parts.

Therefore, a manufacturer would be liable for all known damage to a motor vehicle without regard to the cost to repair, but required to disclose to the dealer damages exceeding 3 percent of the MSRP or \$650, whichever is less, excluding the cost of replacement parts.

It would be made "unlawful" for a manufacturer to fail to assume all responsibility for any liability resulting from structural or production defects. This would make manufacturers strictly liable for these defects and absolve others in the distributive chain such as retailers, wholesalers, and distributors from liability. It also would be made "unlawful" for manufacturers to fail to compensate a dealer for repairs authorized by the manufacturer to a motor vehicle damaged after production or in transit. However, no civil or criminal sanctions are specified for manufacturers that violate this section.

Motor vehicle distributors, importers, or motor vehicle auctions are not referenced in the bill and would not be required by statute to notify manufacturers or dealers of damage that occurred to a motor vehicle while in the custody of an importer or a distributor.

⁹27 FL. Jur. 2d, Fraud and Deceit § 7 (1981).

Dealers and Buyers

Prior to entering into a sales contract, a dealer would be required to disclose to a buyer, in writing, any damage and repair to a motor vehicle, if:

- (1) the dealer has actual knowledge of the damage and repair; and
- (2) the repair cost exceeds 3 percent of the MSRP or \$650, whichever is less, excluding the cost of replacement parts.

If a dealer failed to make the required disclosure, the buyer would have certain remedies in addition to those available under current law. The buyer could rescind the sales contract, provided the buyer returned the vehicle to the dealer within 30 days from the date of purchase. If the buyer chose to rescind the sales contract, the buyer could not sue for damages under this act for failure to disclose. If the buyer did not discover the damage and repair until sometime after 30 days from the date of purchase, the buyer would not be able to rescind the contract based "solely upon the fact that the new motor vehicle was damaged and repaired before completion of the sale."

However, in addition to the rescission option, the buyer would be able to sue for damages under this act for failure to disclose. If the buyer prevailed, a court could award a motor vehicle buyer the amount of any pecuniary loss, litigation costs, and reasonable attorney's fees. The buyer would have to bring the action within one year after the buyer discovered or reasonably should have discovered the damage.

A buyer would not be precluded from pursuing other "rights or remedies" under any law, such as the Motor Vehicle Warranty Act and the Florida Deceptive and Unfair Trade Practices Act. However, if dealer disclosure is not required under this act, a buyer would be barred from suing the dealer or manufacturer based "solely upon the fact that the new motor vehicle was damaged and repaired before completion of the sale." This would not appear to preclude actions for breach of contract, implied warranty or fraudulent misrepresentation, for example, because these actions would require proof of something more than just damage and repair of the vehicle.

D. SECTION-BY-SECTION ANALYSIS:

See II.C. above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Highway Safety and Motor Vehicles does not anticipate the provisions of the bill will have a fiscal impact on state government.

2. Expenditures:

See 1. above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, damage repair is a matter of negotiation, contract liability, warranty, or litigation between the parties. It is not anticipated that the provisions of the bill will impose a significant additional economic impact on the private sector.

The bill appears to require dealers to obtain authorization from manufacturers before repairing any motor vehicle damaged after manufacture but before delivery to the dealer. Those manufacturers that have policies in place giving dealers the authority to make certain repairs without specific authorization could experience additional administrative paperwork.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The bill does not specify a standard for measuring the threshold dollar amount used to determine when certain damage disclosures are required. One such standard could be the warranty repair reimbursement rates used by manufacturers.

The bill makes it is unlawful for a vehicle manufacturer to fail to assume all responsibility for structural or production defects of a vehicle and to fail to compensate a dealer for the cost of repairs of a vehicle which are incurred by the dealer. The bill does not specify a penalty for the failure of a manufacturer to comply with these two responsibilities.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 7, 2000, the Committee on Business Regulation & Consumer Affairs adopted a "remove everything" amendment which is traveling with the bill. In addition to correcting cross-references, the amendment includes the following differences from the bill:

- ◆ Clarifies the reference to the definition of motor vehicle relating to truck weight limits;
- ◆ Includes seats, upholstery, and trim in the list of replacement items allowed to be deducted from the "threshold amount";
- ◆ Allows the cost of replacement items to be deducted from the threshold amount if original equipment manufactured parts are used;
- ◆ Reduces the time period for a dealer to notify a manufacturer of damage to a vehicle from seven business days to three business days; and
- ◆ Clarifies that a manufacturer compensate a dealer for repair costs incurred only when the manufacturer has provided written authorization for the repair.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

Prepared by:

Staff Director:

Alan W. Livingston

Rebecca R. Everhart

AS REVISED BY THE COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Stephen Hogge

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